

Resolution Institute Domain Name Dispute

Administrative Panel Decision (single panellist) Matter: auDRP _17_10

Regarding domain name: <adaniaustralia.com.au>

Between:

Adani Australia Company Pty Ltd, ABN 87 163 221 609 ("Adani") and

Mr Callum Buckeridge ("Mr Buckeridge") ABN 83 545 893 542 - a private individual / registered business.

1. The Parties

1.1 The Complainant is Adani Australia Company Pty Ltd, an Australian private Company.

Adani's contact person and representative is Mr Rajesh Goyal, Head of Information Technology

1.2 The Respondent is Mr. Callum Buckeridge, a private individual and registered business owner.

Mr Buckeridge has not responded to any email or written communications from the Resolution Institute.

2. Subject Matter of Complaint

2.1 The domain names in dispute is: < adaniaustralia.com.au >.

2.2 < adaniaustralia.com.au > was registered by Mr Buckeridge on 12 September 2016 by the Registrar: Domain Shield.

2.3 The relevant Name, Trademark or Service Mark is: "Adani Australia".

2.4 The authority for this reference derives from:

- The auDRP Rules and,
- .au Dispute Resolution Policy and,
- The Resolution Institute's Supplemental Rules for .au Domain Name Dispute Resolution Policy (auDRP 2016-01).

3. Jurisdiction and Basis of Determination

The complaint was submitted for determination by a single panellist under:

- (a) The provisions of Section 3 of Schedule B of the auDRP Rules (the "Rules");
- (b) The provisions of Paragraph 4(a) of Schedule A of the .au Dispute Resolution Policy (the "auDRP");
- (c) The Resolution Institute Supplemental Rules for .au Domain Name Dispute Resolution Policy (auDRP 2016-01). The Resolution Institute is the Provider.

Section 4 of Schedule A of the auDRP covers Mandatory Administrative Proceedings.

Section 4(a) deals with Applicable Disputes and states: *"You are required to submit to a mandatory administrative proceeding in the event that a third party (a "Complainant") asserts to the applicable provider, in compliance with the Rules of Procedure that:*

- *Your domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and*
- *You have no rights or legitimate interests in respect of the domain name; and*
- *Your domain name has been registered or subsequently used in bad faith.*

In an administrative proceeding, the Complainant bears the onus of proof."

4. Procedural History (per Resolution Institute)

- 4.1 Complaint received by Resolution Institute ("RI") on 29/05/2017.
- 4.2 A copy of the complaint was submitted with a request to clarify Respondent details, and lock the domain name during proceedings, by email to the Registrar Domain Shield on 29/05/2017.
- 4.3 On 07/06/2017 the Registrar confirmed via email that the domain name in dispute < adaniaustralia.com.au > had been locked (on 07/06/2017).
- 4.4 On the 07/06/2017 RI sent the Respondent (Callum Buckeridge) an email and written notification of the complaint lodged against him. The Complainant was copied in on these notifications.
- 4.5 The due date for a response to the complaint was confirmed to be 26/06/2017.
- 4.6 No acknowledgement was received from the Respondent, by 26/06/2017, or at all.

- 4.7 On 03/07/2017 the provider approached the Panellist. The Panellist confirmed their availability, informed RI that they had no conflict issues with the parties, and accepted the matter on 04/07/2017.
- 4.8 The Case file and relevant correspondence were forwarded onto the Panellist on 04/07/2017.
- 4.9 The Parties to the dispute were notified of the Panellist’s allocation on the 04/07/2017.
- 4.10 The date on which the decision is due is 18/07/2017.
- 4.11 No further submissions were requested or received from either party.
- 4.12 The Panellist’s decision was published and sent to the Provider on 18 July 2017.

5. The Complainant’s Case – Factual Background

- 5.1 The Complainant is Adani Australia Company Pty Ltd (“Adani”), an Australian company, registered on 9 April 2013.
- 5.2 According to Adani’s website: < adaniaustralia.com >, Adani Australia is part of the Adani Group, a global leader in resources, logistics, infrastructure and energy.
- 5.3 Adani Australia’s businesses include resources, infrastructure, solar power and agriculture.

Adani entered the Australian market in 2010, intending to mine coal in Queensland’s Galilee Basin, through the Carmichael Coal Mine. Since then, Adani has expanded its investments in Australia with the Acquisition of the Abbott Point BulkCoal Business (in 2016) and the establishment of Adani Renewables, also in 2016, with a focus on large scale renewable energy projects.

- 5.4 Adani and Adani Australia currently have the following registered domains:

Global Domains	Australian-Specific Domains
<ul style="list-style-type: none">• adani.com	<ul style="list-style-type: none">• adaniaustralia.biz
<ul style="list-style-type: none">• adanimining.com	<ul style="list-style-type: none">• adaniaustralia.com
<ul style="list-style-type: none">• adaniports.com	<ul style="list-style-type: none">• adaniaustralia.info
<ul style="list-style-type: none">• adanirenewables.com	<ul style="list-style-type: none">• adaniaustralia.net
<ul style="list-style-type: none">• adanipower.com	<ul style="list-style-type: none">• adaniaustralia.net.au
<ul style="list-style-type: none">• adanigas.com	<ul style="list-style-type: none">• adaniaustralia.org
<ul style="list-style-type: none">• adaniinfra.com	<ul style="list-style-type: none">• adaniaustralia.biz

<ul style="list-style-type: none">• adaniwilmar.com	<ul style="list-style-type: none">• adaniaustralia.com
<ul style="list-style-type: none">• adanirail.com	<ul style="list-style-type: none">• adanisolar.com.au
	<ul style="list-style-type: none">• adanigroup.com.au
	<ul style="list-style-type: none">• adanirail.com.au
	<ul style="list-style-type: none">• adanirenewables.com.au
	<ul style="list-style-type: none">• adanimining.com.au
	<ul style="list-style-type: none">• adaniports.com.au
	<ul style="list-style-type: none">• adaniabbotpoint.com

5.5 Adani Australia was registered on 9 April 2013. The company claims to have registered the domain name < adaniaustralia.com.au > in 2014, but then failed to finalise or maintain the registration, as a result of self-confessed “delays”. The domain registration lapsed in August 2015.

5.6 On 12 September 2016 Mr Buckeridge registered < adaniaustralia.com.au > as a domain.

5.7 Adani wishes to recover the domain for the purpose of creating: a “revised active directory structure and identity related to Adani Australia profile and branding”.

5.8 Adani requests the transfer of the disputed domain name to itself.

5. Complainant’s Arguments:

5.1 Adani asserts that the Respondent registered the domain name without having any association with any Adani entities, and with no current business names or trademarks in any way associated with the name “Adani”.

5.2 Sch A, 4a(i): the domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights and,

5.3 Sch A, 4a(ii): the respondent has no rights or legitimate interests in respect of the domain name and,

5.4 Sch A, 4a(iii): the domain name has been registered or subsequently used in bad faith.

6. Remedies Sought

The Complainant requests that the Respondent be required to transfer the disputed domain name to them.

7. The Respondent's Case - Factual Background

- 7.1 The Respondent has not responded to the notice of complaint. The only factual information available is as presented by the complainant, which has been verified with Australian "Whois Lookup" services and Australian Government ABN Lookup search.
- 7.2 Per (7.1), Mr Buckeridge appears on the Australian Business Register, as: Buckeridge, Callum, ABN 83 545 893 542; Individual/Sole Trader; not currently registered for GST; main business location - Queensland 4157. His trading name was first registered on 1 January 2008 and his ABN status has been active from 10 June 2015.

8. The Respondent's Case - Arguments

No response or argument has been provided.

9. Decisions, with brief reasons

- 9.1 I am required to determine whether the Complainant has established that the Respondent's right to own and operate the disputed domains fails all three tests specified by Section 4(a) of Schedule A of the auDRP. The Complainant carries the burden of proof.
- 9.2 If I find that the complaints are justified I am required to determine whether the disputed domain should be transferred into the Complainant's name (or have its registration cancelled).
- 9.3 I note that Adani is a distinctive brand associated with a major global corporation with significant current investments and operations in Australia. Nevertheless, the Complainant is required to make out a case sufficient to justify a determination in its favour.
- 9.4 In addition to my responses to issues raised in this dispute I have attached relevant extracts from Policy No: 2012-04: Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs. Publication Date: 17/12/2012. These appear as Appendix A to this determination.

10. Question 1: Per 4(a) (i) - is the domain name identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights?

- 10.1 **I find** that the disputed domain name: <adaniaustralia.com.au> is, for all practical purposes, "identical", or "confusingly similar" to the Complainant's domain <adaniaustralia.com>, and its approved trademarks and/or service marks: "Adani" and "Adani Australia".
- 10.2 The complaint therefore succeeds on this item.

11. Question 2: Per 4(a) (ii) – has the Complainant established that the Respondent has no rights or legitimate interests in respect of the domain names?

11.1 Section 4(c) of Schedule A to the Policy lists three forms of evidence that may demonstrate a Respondent's rights and legitimate interests in a disputed domain:

- (i) *before any notice to you of the subject matter of the dispute, your bona fide use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with an offering of goods or services (not being the offering of domain names that you have acquired for the purpose of selling, renting or otherwise transferring); or*
- (ii) *you (as an individual, business, or other organisation) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or*
- (iii) *you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the name, trademark or service mark at issue.*

11.2 **I find** no evidence or argument to indicate that the Respondent has any rights or legitimate interests in the disputed domain name: <adaniaustralia.com.au>.

11.3 **I find** that the Complainant has established that the Respondent lacks rights or legitimate interests in respect of the disputed domain name <adaniaustralia.com.au>.

11.4 The complaint therefore succeeds on this item.

12. Question 3: Per 4(a) (iii) – has the Respondent registered or subsequently used its domain name in bad faith?

12.1 Section 4(b) of Schedule A to the Policy lists four forms of evidence of registration and use of a domain in bad faith. In respect of the Respondent:

- (i) *circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to another person for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or*
- (ii) *you have registered the domain name in order to prevent the owner of a name, trademark or service mark from reflecting that name or mark in a corresponding domain name; or*

- (iii) *you have registered the domain name primarily for the purpose of disrupting the business or activities of another person; or*
- (iv) *by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to a web site or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of that web site or location or of a product or service on that web site or location.*

12.2 **I find** that the Complainant has established a reasonable expectation, on balance of probabilities, that the disputed domain name was acquired to prevent them from reflecting the subject names or marks in a corresponding domain name, per 4(b)(ii).

12.3 **I find** that, with reference to the circumstances of this matter, that the Complainant has established that the Respondent registered the domain name in bad faith.

12.4 The complaint therefore succeeds on this item.

13. In accordance with Section 6 of the auDRP, the Complainant requests a decision that transfers the disputed domain name to itself 6.1(b).

I determine, for the reasons given above, that the Complainant has succeeded in its submission and that it is eligible for the remedy it seeks, being to transfer the disputed domain from the Respondent to the Complainant.

Signed as a Determination,

A handwritten signature in black ink, appearing to read 'Jon Kenfield', with a large, stylized flourish at the end.

Jon Kenfield

Panellist

Melbourne, 18th July 2017

2012-04 - Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs

Policy No: 2012-04

Publication Date: 17/12/2012

2. DOMAIN NAME LICENCES

2.3 There is no hierarchy of rights in the DNS. For example, a registered trade mark does not confer any better entitlement to a domain name than a registered company or business name.

Domain name licences are allocated on a 'first come, first served' basis. Provided the relevant eligibility and allocation rules are satisfied, the first registrant whose application for a particular domain name is submitted to the registry will be permitted to license it.

SCHEDULE A

ELIGIBILITY AND ALLOCATION RULES FOR ALL OPEN 2LDS

First come, first served

Domain name licences are allocated on a 'first come, first served' basis. It is not possible to pre-register or otherwise reserve a domain name.

SCHEDULE C

ELIGIBILITY AND ALLOCATION RULES FOR COM.AU

The com.au 2LD is for commercial purposes.

The following rules are to be read in conjunction with the Eligibility and Allocation Rules for All Open 2LDs, contained in Schedule A of this document.

2. Domain names in the com.au 2LD must be:

- a) an exact match, abbreviation or acronym of the registrant's name or trademark; or
- b) otherwise closely and substantially connected to the registrant, in accordance with the categories of "close and substantial connection" set out in the Guidelines on the Interpretation of Policy Rules for the Open 2LDs.

3. A domain name may also be registered in the com.au 2LD under paragraph 2(b) for the purpose of domain monetisation, in accordance with the explanation of "domain monetisation" set out in the Guidelines on the Interpretation of Policy Rules for the Open 2LDs, provided that the following conditions are met:

- a) the content on the website to which the domain name resolves must be related specifically and predominantly to subject matter denoted by the domain name; and
- b) the domain name must not be, or incorporate, an entity name, personal name or brand name in existence at the time the domain name was registered*.

** Definitions:*

“entity name” means the name of an Australian registered company or incorporated association as listed with the Australian Securities and Investment Commission (ASIC), or the name of an Australian government body. It does not include a registered business name;

“personal name” means the given name(s) and/or last name of a person; and

“brand name” means the name of an identifiable and distinctive product or service, whether commercial or non-commercial.

(The rules for domains ending in <.net.au> are similar to those for <.com.au>.

2012-05 - Guidelines on the Interpretation of Policy Rules for Open 2LDs

Policy No: 2012-05

Publication Date: 17/12/2012

1. BACKGROUND

1.1 This document sets out guidelines on the interpretation of the Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs (2012-04). At the time of publication, the open 2LDs are asn.au, com.au, id.au, net.au and org.au.

2. PURPOSE OF GUIDELINES

2.1 The policy rules for the open 2LDs are divided into two types of criteria:

a) Eligibility - is the registrant eligible to license a domain name in the requested 2LD?;

and

b) Allocation - can the requested domain name be allocated to the registrant?

2.2 The Eligibility criteria require the registrant to provide the relevant identification details for the 2LD that they want to license their domain name in. For example, if the registrant wants to license a domain name in com.au, they must provide identification details such as Australian registered company name and Australian Company Number (ACN).

2.3 The Allocation criteria require the registrant to give a reason why the requested domain name can be allocated to them. The reasons available in each 2LD are:

a) exact match, abbreviation or acronym of registrant's name; or

b) otherwise closely and substantially connected to the registrant (known as the “close and substantial connection rule”).

4. RULES FOR ALL OPEN 2LDS

4.1 Before determining that a domain name application meets the specific Eligibility and Allocation criteria for the particular 2LD, registrars must check that each domain name

application complies with the general rules that apply in all open 2LDs.

4.2 Domain names are allocated on a “first come, first served” basis. Provided that the registrant meets the relevant policy rules, the registrar may process the application, submit the registration to the registry and issue a domain name licence to the registrant. Registrars are not required to decide whether or not the domain name potentially infringes the rights of a third party.

10. ALLOCATION CRITERIA - “OTHERWISE CLOSELY AND SUBSTANTIALLY CONNECTED”, OR THE “CLOSE AND SUBSTANTIAL CONNECTION” RULE

10.1 The “close and substantial connection” rule is where the requested domain name is connected to the registrant in accordance with the listed categories for each 2LD.

10.2 The purpose of the close and substantial connection rule is to allow some flexibility for registrants who do not want to license a domain name that is directly related to their name (or cannot do so, because the domain name has already been licensed by another registrant with the same or similar name). It is important to note that this rule is NOT intended as a “free for all”, and the degree of flexibility is limited by the categories of close and substantial connection outlined below, as well as the specific conditions of use outlined in the policy rules.

10.3 At the point in the application form where a registrant indicates that they are eligible for a domain name under the close and substantial connection rule, registrars must provide a link to a page that sets out the criteria for the close and substantial connection rule.

11. ALLOCATION CRITERIA – “DOMAIN MONETISATION” IN COM.AU AND NET.AU

11.1 In the com.au and net.au 2LDs, in addition to the categories of close and substantial connection listed in paragraph 10.5 above, it is also permissible to register a domain name for the purpose of domain monetisation under the close and substantial connection rule. Examples of domain monetisation include:

- a) resolving the domain name to a website or landing page containing pay per click advertising links (also known as “parked pages”);
- b) resolving the domain name to a website or landing page containing content such as general information, news articles, product reviews, blog posts and images, with the primary intent of generating revenue from third party affiliate or commission programs or pay per click advertising;
- c) resolving the domain name to a website that contains directory listings;
- d) redirecting the domain name to another domain name under a third party affiliate or commission program;
- e) using the domain name to provide featured advertising services; and
- f) using the domain name for traffic optimisation purposes.

11.2 Registrants who register domain names for the purpose of domain monetisation do not fall into any of the categories of close and substantial connection outlined in paragraph 10.5. For example, a registrant who registers “shoes.com.au” for domain monetisation purposes does not actually sell or manufacture shoes; their intention is to earn revenue from the domain name in one of the ways listed in paragraph 11.1. The policy rules allow people to register domain names for the purpose of domain monetisation under the close and substantial connection rule, but with two conditions of use to ensure that the intent and integrity of the close and substantial connection rule is maintained.

11.3 The first condition is that “the content on the website to which the domain name resolves must be related specifically and predominantly to subject matter denoted by the domain name”. This is intended to ensure that the close and substantial connection between the registrant and the domain name is visible and meaningful to users. If the content of the website does not relate to the domain name in any discernible way, then the close and substantial connection rule is not satisfied. auDA uses a “reasonableness test” to determine whether the content on the website satisfies the condition, ie. would a reasonable person regard the content as related specifically and predominantly to the domain name?

11.4 The second condition is that “the domain name must not be, or incorporate, an entity name, personal name or brand name in existence at the time the domain name was registered”. This condition is intended to ensure that domain monetisation is not used as a cover for cybersquatting or other misleading or fraudulent activity. In determining whether a registrant is in breach of this condition, auDA will take into account whether the domain name is a generic word or may have an alternative meaning which is not related to a specific entity, person or brand.